

107TH CONGRESS
2D SESSION

H. R. 4749

To reauthorize the Magnuson-Stevens Fishery Conservation and Management Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 16, 2002

Mr. GILCHREST introduced the following bill; which was referred to the Committee on Resources

A BILL

To reauthorize the Magnuson-Stevens Fishery Conservation and Management Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Magnuson-Stevens Act
5 Amendments of 2002”.

6 **SEC. 2. AMENDMENT OF MAGNUSON-STEVEN'S FISHERY**
7 **CONSERVATION AND MANAGEMENT ACT.**

8 Except as otherwise expressly provided, whenever in
9 this Act an amendment or repeal is expressed in terms
10 of an amendment to, or repeal of, a section or other provi-

1 sion, the reference shall be considered to be made to a
2 section or other provision of Magnuson-Stevens Fishery
3 Conservation and Management Act (16 U.S.C. 1801 et
4 seq.).

5 **SEC. 3. REPORT ON OVER CAPITALIZATION.**

6 (a) IN GENERAL.—The Secretary shall, within 12
7 months after the date of the enactment of this Act, submit
8 to the Congress a report—

9 (1) identifying and describing the 20 fisheries
10 in United States waters with the most severe exam-
11 ples of excess harvesting capacity in the fisheries,
12 based on value of each fishery and the amount of ex-
13 cess harvesting capacity as determined by the Sec-
14 retary;

15 (2) recommending measures for reducing such
16 excess harvesting capacity, including the retirement
17 of any latent fishing permits that could contribute to
18 further excess harvesting capacity in those fisheries;
19 and

20 (3) potential sources of funding for such meas-
21 ures.

22 (b) BASIS FOR RECOMMENDATIONS.—The Secretary
23 shall base the recommendations made with respect to a
24 fishery on—

1 (1) the most cost effective means of achieving
2 voluntary reduction in capacity for the fishery using
3 the potential for industry financing; and

4 (2) including measures to prevent the capacity
5 that is being removed from the fishery from moving
6 to other fisheries in the United States, in the waters
7 of a foreign nation, or in the high seas.

8 **SEC. 4. BUYOUT PROVISIONS.**

9 (a) DISCRETION OF SECRETARY TO CONDUCT FISH-
10 ING CAPACITY REDUCTION PROGRAM.—Section 312(b)
11 (16 U.S.C. 1861a(b)) is amended—

12 (1) in paragraph (1) by striking “, at the re-
13 quest of the appropriate Council for fisheries under
14 the authority of such Council, or the Governor of a
15 State for fisheries under State authority,”;

16 (2) in paragraph (1), by inserting “that is man-
17 aged under a limited access system authorized by
18 section 303(b)(6),” after “in a fishery”; and

19 (3) by redesignating paragraph (4) as para-
20 graph (5), and by inserting after paragraph (3) the
21 following:

22 “(4) The Council, or the Governor of a State, having
23 authority over a fishery may request the Secretary to con-
24 duct a fishing capacity reduction program in the fishery
25 under this subsection.”.

1 (b) REQUIREMENT TO SURRENDER ALL PERMITS.—

2 Section 312(b)(2) (16 U.S.C. 1861a(b)(2)) is amended to
3 read as follows:

4 “(2)(A) The objective of the program shall be to ob-
5 tain the maximum sustained reduction in fishing capacity
6 at the least cost and in a minimum period of time.

7 “(B) To achieve that objective, the Secretary is au-
8 thorized to pay an amount to the owner of a fishing vessel,
9 if—

10 “(i) such vessel is scrapped, or through the Sec-
11 retary of the department in which the Coast Guard
12 is operating, subjected to title restrictions that per-
13 manently prohibit and effectively prevent its use in
14 fishing;

15 “(ii) all permits authorizing the participation of
16 the vessel in any fishery under the jurisdiction of the
17 United States are surrendered for permanent revoca-
18 tion; and

19 “(iii) the owner of the vessel and such permits
20 relinquishes any claim associated with the vessel and
21 such permits that could qualify such owner for any
22 present or future limited access system permit in the
23 fishery for which the program is established.”.

24 (c) ENSURING VESSELS DO NOT ENTER FOREIGN
25 OR HIGH SEAS FISHERIES.—Section 312(b) (16 U.S.C.

1 1861a(b)) is further amended by adding at the end the
2 following:

3 “(5) The Secretary may not make a payment under
4 paragraph (2) with respect to a vessel that will not be
5 scrapped, unless the Secretary certifies that the vessel will
6 not be used for any fishing, including fishing in the waters
7 of a foreign nation and fishing on the high seas.”.

8 **SEC. 5. DATA COLLECTION.**

9 (a) COLLECTION OF RECREATIONAL CATCH DATA.—
10 Section 402 (16 U.S.C. 1881a) is amended by adding at
11 the end the following:

12 “(f) COLLECTION OF RECREATIONAL CATCH
13 DATA.—(1) The Secretary shall develop and implement a
14 program for the sharing of recreational catch data for all
15 federally managed fisheries through the use of information
16 gathered from State-licensed recreational fishermen.

17 “(2) The Secretary shall conduct the program in con-
18 sultation with the principle State officials having marine
19 fishery management responsibility and expertise.

20 “(3) The Secretary shall report to the Congress with-
21 in three years after the effective date of this subsection,
22 on—

23 “(A) the progress made in developing such a
24 program; and

1 “(B) whether the program has resulted in sig-
2 nificantly better data collection for the recreational
3 fishing sector.”.

4 (b) REPORT.—Not later than 6 months after the date
5 of the enactment of this Act, the Secretary of Commerce
6 shall submit to the Congress a report describing the fol-
7 lowing:

8 (1) Economic data from United States proc-
9 essors that is necessary to conduct fishing commu-
10 nity and economic analysis determinations required
11 under chapter 6 of title 5, United States Code, pop-
12 ularly known as the Regulatory Flexibility Act.

13 (2) The reasons why such information is not
14 available through other sources such as tax returns,
15 the Bureau of Labor Statistics, and State labor de-
16 partments.

17 (3) The steps the Secretary would take under
18 section 402 of the Magnuson-Stevens Fishery Con-
19 servation and Management Act (16 U.S.C. 1881a)
20 to ensure the confidentiality of such information (es-
21 pecially proprietary information), if the information
22 were obtained by the Secretary.

23 **SEC. 6. ECOSYSTEM-BASED MANAGEMENT.**

24 (a) POLICY.—Section 2(c) (16 U.S.C. 1851(c)) by
25 striking “and” after the semicolon at the end of paragraph

1 (6), by striking the period at the end of paragraph (7)
2 and inserting “; and”, and by adding at the end the fol-
3 lowing:

4 “(8) to support and encourage efforts to under-
5 stand the interactions of species in the marine envi-
6 ronment and the development of ecosystem-based
7 approaches to fisheries conservation and manage-
8 ment that will lead to better stewardship and sus-
9 tainability of the Nation’s coastal fishery resources
10 and fishing communities.”.

11 (b) AUTHORIZATION OF RESEARCH.—Section 404(c)
12 (16 U.S.C. 1881c(c)) is amended by adding at the end
13 the following:

14 “(5) The interaction of species in the marine
15 environment, and the development of ecosystem-
16 based approaches to fishery conservation and man-
17 agement that will lead to better stewardship and
18 sustainability of coastal fishery resources.”.

19 (c) DEFINITIONS AND CRITERIA FOR MANAGEMENT
20 PLANS.—

21 (1) IN GENERAL.—The Secretary shall, in con-
22 junction with the Councils—

23 (A) create a definition for “ecosystem” and
24 for “marine ecosystem”; and

1 (B) establish criteria for the development
2 of ecosystem-based management plans by each
3 regional fishery management council based on
4 the recommendations of the Ecosystems Prin-
5 ciples Advisory Panel.

6 (2) REPORT.—The Secretary shall report to the
7 Congress within 2 years after the date of the enact-
8 ment of this Act on the criteria, including an identi-
9 fication and description of those criteria for which
10 sufficient data is not available.

11 (d) IDENTIFICATION OF MARINE ECOSYSTEMS; RE-
12 SEARCH PLAN.—

13 (1) IN GENERAL.—Within one year after the
14 date of the submission of the report under sub-
15 section (c)(2) to the Congress, the Secretary, in con-
16 junction with the regional science centers and the re-
17 gional fishery management councils, shall—

18 (A) identify specific marine ecosystems
19 within each region; and

20 (B) also develop and begin to implement
21 regional research plans to meet the information
22 deficit identified in the report.

23 (2) RESEARCH PLANS.—The research plans
24 shall suggest reasonable timelines and cost estimates
25 for the collection of the required information.

1 (3) REPORTS.—The Secretary shall report to
2 the Congress annually on the progress of the re-
3 gional research plans.

4 (e) ECOSYSTEM-BASED FISHERY MANAGEMENT
5 PLAN PILOT PROGRAM.—

6 (1) IN GENERAL.—Upon the completion of de-
7 velopment of regional research plans under sub-
8 section (d)(1), the Secretary of Commerce shall es-
9 tablish and begin implementing a pilot program for
10 the management of one fishery on the east coast of
11 the United States and one fishery on the west coast
12 of the United States under an ecosystem-based fish-
13 ery management plan under the Magnuson-Stevens
14 Fishery Conservation and Management Act.

15 (2) CONSULTATION.—The Secretary shall de-
16 velop and implement ecosystem-based fishery man-
17 agement plans under this subsection in consultation
18 with the appropriate Regional Fishery Management
19 Councils.

20 (f) DISCRETIONARY PROVISION IN FISHERY MAN-
21 AGEMENT PLANS.—Section 303(b)(12) (16 U.S.C.
22 1853(b)(12)) is amended by inserting before the period
23 the following: “or for the health or stability of the marine
24 ecosystem”.

1 **SEC. 7. OBSERVERS.**

2 (a) IN GENERAL.—Not later than one year after the
3 date of the enactment of this Act, the Secretary shall re-
4 port to the Congress on the needs for a national observer
5 program.

6 (b) RECOMMENDATIONS.—The report shall make rec-
7 ommendations on observation options, including electronic
8 data collection technologies and on-board observers.

9 (c) The Secretary, in the report, shall include the fol-
10 lowing:

11 (1) A determination of whether the data collec-
12 tion needs are for management or enforcement pur-
13 poses.

14 (2) A statement of the level of observer cov-
15 erage necessary in various types of fisheries to pro-
16 vide statistically reliable information.

17 (3) Cost estimates for various levels of observer
18 coverage.

19 (4) Options for the funding of observer cov-
20 erage.

21 (5) The types of vessels and fisheries for which
22 observer coverage cannot be required due to safety
23 concerns.

24 (6) Recommendations for the use of the data
25 gathered by the observing systems.

1 (7) Recommendations for the confidentiality of
2 proprietary information collected through the pro-
3 gram.

4 **SEC. 8. OVERFISHING.**

5 (a) CLARIFICATION OF DEFINITION.—Section 3(29)
6 (16 U.S.C. 1802(29)) is amended to read as follows:

7 “(29)(A) The term ‘overfished’ means, with re-
8 spect to a stock of fish, that the stock is of a size
9 that is below the natural range of fluctuation associ-
10 ated with the production of maximum sustainable
11 yield.

12 “(B) The term ‘overfishing’ means a rate or
13 level of fishing mortality that jeopardizes the capac-
14 ity of a fishery to produce the maximum sustainable
15 yield on a continuing basis.”.

16 (b) DISTINGUISHING IN REPORTS.—Section
17 304(e)(1) (16 U.S.C. 1854(e)(1)) is amended by inserting
18 after paragraph (1) the following: “The report shall distin-
19 guish between fisheries that are overfished (or approach-
20 ing that condition) as a result of fishing and fisheries that
21 are overfished (or approaching that condition) as a result
22 of factors other than fishing. The report shall state, for
23 each fishery identified as overfished or approaching that
24 condition, whether the fishery is the target of directed
25 fishing.”.

1 **SEC. 9. BYCATCH.**

2 (a) DEFINITION.—Section 3(2) (16 U.S.C. 1802(2))
3 is amended in the first sentence by inserting “and
4 seabirds” after “regulatory discards”.

5 (b) REPORTING METHODOLOGY.—Section
6 303(a)(11) is amended—

7 (1) by striking “establish a standardized” and
8 inserting “within one year after the date of the en-
9 actment of the Magnuson-Stevens Act Amendments
10 of 2002, establish and begin implementing a stand-
11 ardized”; and

12 (2) by adding at the end the following:

13 “except that if such a methodology cannot be estab-
14 lished or implemented within such one-year period,
15 the Council or the Secretary shall publish a report
16 explaining the reasons why, and the Secretary shall
17 take appropriate action to address those reasons;”.

18 (c) CHARITABLE DONATION OF BYCATCH.—Section
19 303(b) (16 U.S.C. 1853(b)) is amended by striking “and”
20 after the semicolon at the end of paragraph (11), by strik-
21 ing the period at the end of paragraph (12) and inserting
22 “; and”, and by adding at the end the following:

23 “(13) allow the retention and donation for char-
24 itable purposes of all dead bycatch that cannot oth-
25 erwise be avoided under terms that ensure, through
26 the use of onboard fishery observers or other means,

1 that such retention and donation do not allow the
2 evasion of vessel trip limits, total allowable catch lev-
3 els, or other conservation and management meas-
4 ures.”.

5 (d) BYCATCH REDUCTION GEAR DEVELOPMENT.—

6 (1) IN GENERAL.—Title IV (1 U.S.C. 1881 et
7 seq.) is amended by adding at the end the following:

8 **“SEC. 408. GEAR DEVELOPMENT.**

9 “(a) IDENTIFICATION OF FISHERIES WITH SIGNIFI-
10 CANT BYCATCH PROBLEMS.—(1) The Secretary, in con-
11 junction with the Councils, shall identify and publish in
12 the Federal Register a list of fisheries with significant by-
13 catch problems, as determined under criteria developed by
14 the Secretary.

15 “(2) The list shall contain, for each fishery identified,
16 information on—

17 “(A) the number of participants in the fishery;

18 “(B) the types of gears used in the fishery;

19 “(C) the bycatch species;

20 “(D) the amount of bycatch, and the percent-
21 age of total catch that is bycatch; and

22 “(E) any other relevant information.

23 “(3) The Secretary shall solicit comments on each list
24 published under this subsection.

1 “(b) IDENTIFICATION OF FISHERIES WITH MOST
2 URGENT BYCATCH PROBLEMS.—The Secretary shall—

3 “(1) identify those fisheries included in a list
4 under paragraph (1) that have the most urgent by-
5 catch problems, based on comments received regard-
6 ing the list; and

7 “(2) work in conjunction with the Councils and
8 fishing industry participants to develop new fishing
9 gear, or modifications to existing fishing gear, that
10 will help minimize bycatch to the extent practicable.

11 “(c) GRANT AUTHORITY.—The Secretary shall, sub-
12 ject to the availability of appropriations, make grants for
13 the development of fishing gear and modifications to exist-
14 ing fishing gear that will help—

15 “(1) minimize bycatch; and

16 “(2) minimize adverse fishing gear impacts on
17 habitat areas of particular concern.

18 “(d) REPORT.—The Secretary shall report to the
19 Congress annually on—

20 “(1) the amount expended to implement this
21 section in the preceding year;

22 “(2) developments in gear technology achieved
23 under this section;

24 “(3) the reductions in bycatch associated with
25 implementation of this section; and

1 “(4) any other relevant information.

2 “(e) AUTHORIZATION OF APPROPRIATIONS.—To
3 carry out this section there is authorized to be appro-
4 priated to the Secretary \$10,000,000 for each of fiscal
5 years 2003 through 2007.”.

6 (2) CLERICAL AMENDMENT.—The table of con-
7 tents in the first section is amended by add at the
8 end of the items relating to title IV the following:

“Sec. 408. Gear development.”.

9 **SEC. 10. FISH HABITAT RESEARCH AND PROTECTION.**

10 (a) PRIORITY RESEARCH.—Section 404 (16 U.S.C.
11 1881c) is amended by adding at the end the following:

12 “(e) PRIORITY FOR RESEARCH REGARDING OVER-
13 FISHED FISHERIES.—In carrying out or funding fisheries
14 research under this and other laws regarding essential fish
15 habitat, the Secretary shall give priority to research to
16 identify such habitat for fisheries that are overfished or
17 approaching an overfished condition.”.

18 (b) REQUIRED PROVISION IN FISHERY MANAGE-
19 MENT PLANS.—Section 303(a)(7) (16 U.S.C. 1853(a)(7))
20 is amended to read as follows:

21 “(7)(A) describe and identify essential fish
22 habitat for the fishery based on the guidelines estab-
23 lished by the Secretary under section 305(b)(1)(A);

24 “(B) minimize to the extent practicable adverse
25 effects on such habitat caused by fishing for those

1 fisheries identified by the Council as having available
2 information on the growth, reproduction, or survival
3 rates within habitats or production rates by habitat,
4 or for those fisheries that the Council determines the
5 specific fishing activity effects on the essential fish
6 habitat jeopardize the ability of the fishery to
7 produce maximum sustained yield on a continuing
8 basis;

9 “(C) minimize to the extent practicable adverse
10 effects on habitat areas of particular concern caused
11 by fishing; and

12 “(D) identify other actions to encourage the
13 conservation and enhancement of such habitat;”.

14 (c) DISCRETIONARY PROVISION IN FISHERY MAN-
15 AGEMENT PLANS.—Section 303(b) (16 U.S.C. 1853(b))
16 is amended by striking “and” after the semicolon at the
17 end of paragraph (11), by striking the period at the end
18 of paragraph (12) and inserting a semicolon, and by add-
19 ing at the end the following:

20 “(13) minimize to the extent practicable ad-
21 verse effects caused by fishing, on essential fish
22 habitat described and identified under section
23 303(a)(7)(A); and”.

1 (d) HABITAT AREA OF PARTICULAR CONCERN.—
 2 Section 3 (16 U.S.C. 1802) is amended by adding at the
 3 end the following:

4 “(46) The term ‘habitat area of particular con-
 5 cern’ means any discrete habitat area that is essen-
 6 tial fish habitat and that—

7 “(A) provides important ecological func-
 8 tions;

9 “(B) is sensitive to human-induced envi-
 10 ronmental degradation; or

11 “(C) is a rare habitat type.”.

12 **SEC. 11. DEMONSTRATION PROGRAM FOR OYSTER SANC-**
 13 **TUARIES AND RESERVES.**

14 (a) IN GENERAL.—The Secretary of Commerce,
 15 through the National Oceanic and Atmospheric Adminis-
 16 tration Chesapeake Bay Office, shall develop a program
 17 for the design, construction, and placement of oyster sanc-
 18 tuaries or reserves consistent with the agreement known
 19 as the Chesapeake 2000 Agreement. The program shall
 20 be developed in conjunction with the Corps of Engineers,
 21 the Coast Guard, the Environmental Protection Agency,
 22 the State of Maryland, the Commonwealth of Virginia, the
 23 Oyster Recovery Partnership, the Chesapeake Bay Foun-
 24 dation, the Oyster Heritage Foundation, local commercial
 25 and recreational fishing organizations, the Port of Balti-

1 more, the University of Maryland, the Virginia Institute
2 of Marine Sciences, and other users of the waters of the
3 Chesapeake Bay, as appropriate.

4 (b) ARTIFICIAL STRUCTURES OR REEFS.—The pro-
5 gram shall include the design, construction, and placement
6 of artificial structures or reefs to act as beds for oyster
7 production. The placement of these structures and reefs
8 should be designed to maximize the production of oysters
9 while minimizing conflicts with existing uses such as fish-
10 ing or navigation. The structures and reefs shall be placed
11 in areas which will not be hazards to navigation. The Sec-
12 retary shall work with interested parties to ensure that
13 all sites are adequately marked on navigation charts as
14 appropriate.

15 (c) RESEARCH PLAN.—The Secretary shall develop
16 a research plan for the placement of artificial structures
17 and reefs under the program, including measurable goals
18 and a monitoring program to determine the effectiveness
19 of the structures and reefs in recovering native oyster pop-
20 ulations.

21 (d) NO FISHING REGULATIONS.—The Secretary shall
22 recommend State regulations prohibiting fishing in the
23 waters surrounding artificial structures or reefs placed
24 under this section as necessary to ensure the reproduction
25 of oysters on the structures and reefs. The restrictions

1 may be seasonal in nature, and shall not apply in any area
 2 that is located more than 100 meters from such a struc-
 3 ture or reef.

4 (e) RESTORATION OF NATIVE OYSTERS.—The pro-
 5 gram shall use only native oyster species.

6 (f) REPORT.—The Secretary of Commerce shall sub-
 7 mit to the Congress annual reports on the program under
 8 this section.

9 (g) AUTHORIZATION OF APPROPRIATIONS.—

10 (1) IN GENERAL.—To carry out this section
 11 there is authorized to be appropriated to the Sec-
 12 retary \$5,000,000 for each of fiscal years 2004
 13 through 2009.

14 (2) LIMITATION.—Not more than 5 percent of
 15 amounts appropriated under this section may be
 16 available for administrative expenses.

17 **SEC. 12. INDIVIDUAL QUOTA LIMITED ACCESS PROGRAMS.**

18 (a) AUTHORITY TO ESTABLISH INDIVIDUAL QUOTA
 19 SYSTEMS.—Section 303(b)(6) (16 U.S.C. 1853(b)(6)) is
 20 amended to read as follows:

21 “(6) establish a limited access system for the
 22 fishery in order to achieve optimum yields, if—

23 “(A) in developing such system, the Coun-
 24 cils and the Secretary take into account—

25 “(i) the need to promote conservation,

1 “(ii) present participation in the fish-
2 ery,

3 “(iii) historical fishing practices in,
4 and dependence on, the fishery,

5 “(iv) the economics of the fishery,

6 “(v) the capability of fishing vessels
7 used in the fishery to engage in other fish-
8 eries,

9 “(vi) the cultural and social frame-
10 work relevant to the fishery and fishing
11 communities, and

12 “(vii) any other relevant consider-
13 ations; and

14 “(B) in the case of such a system that pro-
15 vides for the allocation and issuance of indi-
16 vidual quotas (as that term is defined in sub-
17 section (d)), the system complies with sub-
18 section (d).”.

19 (b) REQUIREMENTS.—Section 303(d) (16 U.S.C.
20 1853(d)) is amended—

21 (1) by redesignating paragraphs (2), (3), (4),
22 and (5) in order as paragraphs (11), (12), (13), and
23 (14);

24 (2) in paragraph (12)(B), as so redesignated,
25 by inserting “, including as a result of a violation of

1 this Act or any regulation prescribed under this
2 Act” before the semicolon;

3 (3) by adding at the end the following:

4 “(15) As used in this subsection:

5 “(A) The term ‘individual quota system’ means
6 a system that limits access to a fishery in order to
7 achieve optimum yields, through the allocation and
8 issuance of individual quotas.

9 “(B) The term ‘individual quota’ means a grant
10 of permission to harvest or process a quantity of fish
11 in a fishery, during each fishing season for which
12 the permission is granted, equal to a stated percent-
13 age of the total allowable catch for the fishery.”; and

14 (4) by striking so much as precedes paragraph
15 (11), as so designated, and inserting the following:

16 “(d) SPECIAL PROVISIONS FOR INDIVIDUAL QUOTA
17 SYSTEMS.—(1) A fishery management plan for a fishery
18 that is managed under a limited access system authorized
19 by subsection (b)(6) may establish an individual quota sys-
20 tem for the fishery in accordance with this subsection.

21 “(2) A fishery management plan that establishes an
22 individual quota system for a fishery—

23 “(A) shall provide for administration of the sys-
24 tem by the Secretary in accordance with the terms
25 of the plan;

1 “(B) shall include provisions that establish pro-
2 cedures and requirements for each Council having
3 authority over the fishery, for—

4 “(i) reviewing and revising the terms of
5 the plan that establish the system; and

6 “(ii) renewing, reallocating, and reissuing
7 individual quotas if determined appropriate by
8 each Council;

9 “(C) shall include provisions to—

10 “(i) provide for fair and equitable alloca-
11 tion of individual quotas under the system, and
12 minimize negative social and economic impacts
13 of the system on fishing communities;

14 “(ii) ensure adequate enforcement of the
15 system, including the use of observers where
16 appropriate; and

17 “(iii) provide for monitoring the temporary
18 or permanent transfer of individual quotas
19 under the system;

20 “(D) shall include provisions that prevent any
21 person from acquiring an excessive share of indi-
22 vidual quotas issued for a fishery; and

23 “(E) shall include measurable conservation
24 goals.

1 “(3) An individual quota issued under an individual
2 quota system established by a fishery management plan
3 may be received, held, or transferred in accordance with
4 regulations prescribed by the Secretary under this Act.

5 “(4)(A) Except as otherwise provided in this para-
6 graph, any fishery management plan that establishes an
7 individual quota system for a fishery may authorize indi-
8 vidual quotas to be held by or issued under the system
9 to fishing vessel owners, fishermen, crew members, fishing
10 communities, other persons as specified by the Council,
11 and United States fish processors.

12 “(B) An individual who is not a citizen of the United
13 States may not hold an individual quota issued under a
14 fishery management plan.

15 “(C) A Federal agency or official may not hold, ad-
16 minister, or reallocate an individual quota issued under
17 a fishery management plan, other than the Secretary and
18 the Council having authority over the fishery for which
19 the individual quota is issued.

20 “(D)(i) A fishing community may not hold individual
21 quotas under an individual quota system established under
22 this subsection for a fishery that authorize harvest of more
23 than the lesser of—

24 “(I) 1 percent of the total authorized harvest in
25 the fishery; or

1 “(II) a percentage of such total authorized har-
2 vest established by the Council having jurisdiction
3 over the fishery.

4 “(ii) This subparagraph does not apply to a commu-
5 nity that is eligible to participate in the western Alaska
6 community development program or the western Pacific
7 community development program, under section 305(i).

8 “(5) Any fishery management plan that establishes
9 an individual quota system for a fishery may include provi-
10 sions that—

11 “(A) allocate individual quotas under the sys-
12 tem among categories of vessels; and

13 “(B) provide a portion of the annual harvest in
14 the fishery for entry-level fishermen, small vessel
15 owners, or crew members who do not hold or qualify
16 for individual quotas.

17 “(6) An individual quota system established for a
18 fishery may be limited or terminated at any time by the
19 Secretary or through a fishery management plan or
20 amendment developed by the Council having authority
21 over the fishery for which it is established, if necessary
22 for the conservation and management of the fishery.

23 “(7)(A) A fishery management plan that establishes
24 an individual quota system for a fishery—

1 “(i) must include measurable conservation
2 goals; and

3 “(ii) to monitor achievement of such goals, may
4 require greater observer coverage or electronic data
5 collection technology on any vessel fishing under an
6 individual quota issued under the system.

7 “(B) Not later than 5 years after the date of the es-
8 tablishment of an individual quota system for a fishery
9 under this section by a Council or the Secretary, and every
10 5 years thereafter, the Council or Secretary, respectively,
11 shall review the effectiveness of the system in achieving
12 the conservation goals required under this paragraph.

13 “(8)(A) The Secretary or a Council—

14 “(i) may not develop a proposal to establish an
15 individual quota system for a fishery, unless develop-
16 ment of the proposal has been approved by a ref-
17 erendum conducted in accordance with this para-
18 graph; and

19 “(ii) may not issue a proposed fishery manage-
20 ment plan or amendment to such a plan to establish
21 such a system unless the proposed plan or amend-
22 ment, respectively, has been approved by a ref-
23 erendum conducted in accordance with this para-
24 graph.

1 “(B) The Secretary, at the request of a Council, shall
2 conduct the referenda required by subparagraph (A). Each
3 referendum with respect to a fishery shall be decided by
4 a 60-percent majority of the votes cast by persons who
5 are determined by the Council, based on guidelines devel-
6 oped by the Secretary, to be eligible to vote in the ref-
7 erendum.

8 “(C) The Secretary shall develop guidelines to deter-
9 mine procedures and voting eligibility requirements for
10 referenda and to conduct such referenda in a fair and eq-
11 uitable manner.

12 “(9) Any individual quota system established under
13 section 303(b)(6) after the date of enactment of the Mag-
14 nuson-Stevens Act Amendments of 2002, and any indi-
15 vidual quota issued under such a system, shall not apply
16 after the end of the 10-year period beginning on the date
17 the system is established, or after the end of any 10-year
18 period thereafter, unless the Council has reviewed and
19 taken affirmative action to continue the system before the
20 end of each such 10-year period.”.

21 (c) FEES.—Section 304(d) is amended—

22 (1) in paragraph (2)(A) by striking “any” and
23 all that follows through “(ii)” and inserting “any”;
24 and

25 (2) by adding at the end the following:

1 “(3)(A) Notwithstanding paragraph (1), the Sec-
2 retary shall collect from a person that holds or transfers
3 an individual quota issued under a limited access system
4 established under section 303(b)(6) fees established by the
5 Secretary in accordance with this section and section
6 9701(b) of title 31, United States Code.

7 “(B) The fees required to be established and collected
8 by the Secretary under this paragraph are the following:

9 “(i) With respect to any initial allocation under
10 a limited access system established after the date of
11 the enactment of the Magnuson-Stevens Act Amend-
12 ments of 2002, an initial allocation fee in an
13 amount, determined by the Secretary, equal to 1
14 percent of the ex-vessel value of fish authorized in
15 one year under an individual quota, that shall be col-
16 lected from the person to whom the individual quota
17 is first issued.

18 “(ii) An annual fee in an amount, determined
19 by the Secretary, not to exceed 3 percent of the ex-
20 vessel value of fish authorized each year under an
21 individual quota share, that shall be collected from
22 the holder of the individual quota share.

23 “(iii) A transfer fee in an amount, determined
24 by the Secretary, equal to 1 percent of the ex-vessel
25 value of fish authorized each year under an indi-

1 vidual quota share, that shall be collected from a
2 person who permanently transfers the individual
3 quota share to another person.

4 “(C) In determining the amount of a fee under this
5 paragraph, the Secretary shall ensure that the amount is
6 commensurate with the cost of managing the fishery with
7 respect to which the fee is collected, including reasonable
8 costs for salaries, data analysis, and other costs directly
9 related to fishery management and enforcement.

10 “(D) The Secretary, in consultation with the Coun-
11 cils, shall promulgate regulations prescribing the method
12 of determining under this paragraph the ex-vessel value
13 of fish authorized under an individual quota share, the
14 amount of fees, and the method of collecting fees.

15 “(E) Fees collected under this paragraph from hold-
16 ers of individual quotas in a fishery shall be an offsetting
17 collection and shall be available to the Secretary only for
18 the purposes of administering and implementing this Act
19 with respect to that fishery.”.

20 (d) APPROVAL OF FISHERY MANAGEMENT PLANS
21 ESTABLISHING INDIVIDUAL QUOTA SYSTEMS.—Section
22 304 (16 U.S.C. 1854) is amended by adding at the end
23 the following:

24 “(i) ACTION ON LIMITED ACCESS SYSTEMS.—(1) In
25 addition to the other requirements of this Act, after the

1 date of the enactment of the Magnuson-Stevens Act
2 Amendments of 2002 the Secretary may not approve a
3 fishery management plan that establishes a limited access
4 system that provides for the allocation of individual quotas
5 (in this subsection referred to as an ‘individual quota sys-
6 tem’) unless the plan complies with section 303(d).

7 “(2) The Secretary shall issue regulations that estab-
8 lish requirements for establishing an individual quota sys-
9 tem. The regulations shall—

10 “(A) specify factors that shall be considered by
11 a Council in determining whether a fishery should be
12 managed under an individual quota system;

13 “(B) ensure that any individual quota system is
14 consistent with the requirements of sections 303(a)
15 and 303(d), and require the collection of fees in ac-
16 cordance with subsection (d)(3) of this section;

17 “(C) provide for appropriate penalties for viola-
18 tions of individual quotas systems, including the sus-
19 pension or revocation of individual quotas for such
20 violations;

21 “(D) include recommendations for potential
22 management options related to individual quotas, in-
23 cluding the authorization of individual quotas that
24 may not be transferred by the holder, and the use
25 of leases or auctions by the Federal Government in

1 the establishment or allocation of individual quotas;
 2 and

3 “(E) establish a central lien registry system for
 4 the identification, perfection, and determination of
 5 lien priorities, and nonjudicial foreclosure of encum-
 6 brances, on individual quotas.”.

7 (e) RESTRICTION ON NEW INDIVIDUAL QUOTA SYS-
 8 TEMS PENDING REGULATIONS.—

9 (1) RESTRICTION.—The Secretary of Commerce
 10 may not approve any covered quota system plan, and
 11 no covered quota system plan shall take effect,
 12 under title III of the Magnuson-Stevens Fishery
 13 Conservation and Management Act, before the effec-
 14 tive date of regulations issued by the Secretary
 15 under section 304(i) of that Act, as added by sub-
 16 section (d) of this section.

17 (2) COVERED QUOTA SYSTEM PLAN DE-
 18 FINED.—In this subsection, the term “covered quota
 19 system plan” means a fishery management plan or
 20 amendment to a fishery management plan, that—

21 (A) proposes establishment of an individual
 22 quota system (as that term is used in section
 23 303(d) of the Magnuson-Stevens Fishery Con-
 24 servation and Management Act, as amended by
 25 this section); and

1 (B) is not approved by the Secretary be-
2 fore May 1, 2002.

3 (f) EXISTING QUOTA PLANS.—Nothing in this Act
4 or the amendments made by this Act shall be construed
5 to require a reallocation of individual fishing quotas under
6 any individual fishing quota program approved by the Sec-
7 retary of Commerce before May 1, 2002.

8 **SEC. 13. COOPERATIVE EDUCATION AND RESEARCH.**

9 (a) DISCRETIONARY PROVISIONS IN FISHERY MAN-
10 AGEMENT PLANS.—Section 303(b) (16 U.S.C. 1853(b))
11 is further amended by striking “and” after the semicolon
12 at the end of paragraph (11), by striking the period at
13 the end of paragraph (12) and inserting a semicolon, and
14 by adding at the end the following:

15 “(14) include provisions to create a cooperative
16 research component including the use of commercial
17 or charter vessels for the gathering of data on stock
18 abundance, composition, distribution, or other rel-
19 evant information important for the implementation
20 of the plan.”.

21 (b) BLACK SEA BASS.—Section 404 (16 U.S.C.
22 1881c) is amended by adding at the end the following:

23 “(f) BLACK SEA BASS COOPERATIVE RESEARCH
24 PROGRAM.—The Secretary, through the New England
25 Fisheries Science Center, shall develop and implement a

1 cooperative stock assessment program, using vessels from
2 the commercial black sea bass fishing industry if appro-
3 priate and available. This cooperative program shall in-
4 clude research on the range of the stock, a determination
5 as to whether there is more than one stock, and a black
6 sea bass genetic study to determine whether there is more
7 than one stock of such species requiring different manage-
8 ment regimes.”.

9 **SEC. 14. REPORT ON HIGHLY MIGRATORY SPECIES.**

10 Section 102 (16 U.S.C. 1812) is amended—

11 (1) by inserting “(a) IN GENERAL.—” before
12 “The United States”; and

13 (2) by adding at the end the following:

14 “(b) ANNUAL REPORT.—The Secretary shall, within
15 one year after the date of the enactment of this subsection
16 and annually thereafter, report to the Congress on—

17 “(1) any nation that is fishing for Atlantic
18 highly migratory species and is not in compliance
19 with the fishery conservation and management provi-
20 sions or any rebuilding recommendations or provi-
21 sions enacted by the international body charged with
22 developing such measures; and

23 “(2) any recommendations for addressing those
24 nations identified under paragraph (1) and actions

1 the United States might take to ensure such compli-
 2 ance by such nations.”.

3 **SEC. 15. PROHIBITED ACTS.**

4 Section 307 (16 U.S.C. 1857) is amended by striking
 5 “and” after the semicolon at the end of paragraph (4),
 6 by striking the period at the end of paragraph (5) and
 7 inserting “; and”, and by adding at the end the following:
 8 “(6) to sell or purchase any fish caught in rec-
 9 reational fishing.”.

10 **SEC. 16. MEMBERSHIP OF FISHERY MANAGEMENT COUN-**
 11 **CILS.**

12 (a) NEW ENGLAND COUNCIL.—Section 302(a)(1)(A)
 13 (16 U.S.C. 1852(a)(1)(A)) is amended by—

14 (1) inserting “New York,” after “Massachu-
 15 setts,”; and

16 (2) striking “18” and inserting “19”.

17 (b) ADDITIONAL MEMBER OF EACH COUNCIL.—Sec-
 18 tion 302 (16 U.S.C. 1852) is further amended as follows:

19 (1) In subsection (a)(1)(A)—

20 (A) by striking “19” and inserting “20”;

21 (B) by striking “12” and inserting “13”;

22 and

23 (C) by inserting before the period the fol-
 24 lowing: “and including one appointed by the

1 Secretary in accordance with subsection
2 (b)(6)”.
3

3 (2) In subsection (a)(1)(B)—

4 (A) by striking “21” and inserting “22”;

5 (B) by striking “13” and inserting “14”;

6 and

7 (C) by inserting before the period the fol-
8 lowing: “and including one appointed by the
9 Secretary in accordance with subsection
10 (b)(6)”.
11

11 (3) In subsection (a)(1)(C)—

12 (A) by striking “13” and inserting “14”;

13 (B) by striking “8” and inserting “9”; and

14 (C) by inserting before the period the fol-
15 lowing: “and including one appointed by the
16 Secretary in accordance with subsection
17 (b)(6)”.
18

18 (4) In subsection (a)(1)(D)—

19 (A) by striking “7” and inserting “8”;

20 (B) by striking “4” and inserting “5”; and

21 (C) by inserting before the period the fol-
22 lowing: “and including one appointed by the
23 Secretary in accordance with subsection
24 (b)(6)”.
25

25 (5) In subsection (a)(1)(E)—

1 (A) by striking “17” and inserting “18”;

2 (B) by striking “11” and inserting “12”;

3 and

4 (C) by inserting before the period the fol-
5 lowing: “and including one appointed by the
6 Secretary in accordance with subsection
7 (b)(6)”.

8 (6) In subsection (a)(1)(F)—

9 (A) by striking “14” and inserting “15”;

10 (B) by striking “8” and inserting “9”;

11 (C) by inserting “by the Secretary” after
12 “including one appointed”; and

13 (D) by inserting before the period the fol-
14 lowing: “and one appointed by the Secretary in
15 accordance with subsection (b)(6)”.

16 (7) In subsection (a)(1)(G)—

17 (A) by striking “11” and inserting “12”;

18 (B) by striking “7” and inserting “8”; and

19 (C) by inserting before the period the fol-
20 lowing: “and including one appointed by the
21 Secretary in accordance with subsection
22 (b)(6)”.

23 (8) In subsection (a)(1)(H)—

24 (A) by striking “13” and inserting “14”;

25 (B) by striking “8” and inserting “9”; and

1 (C) by inserting before the period the fol-
 2 lowing: “and including one appointed by the
 3 Secretary in accordance with subsection
 4 (b)(6)”.

5 (9) In subsection (b)—

6 (A) by redesignating paragraph (6) as
 7 paragraph (7);

8 (B) in paragraph (7), as so redesignated,
 9 by striking “paragraphs (2) or (5)” and insert-
 10 ing “paragraph (2), (5), or (6)”; and

11 (C) by inserting after paragraph (5) the
 12 following:

13 “(6) The member of each Council who is required to
 14 be appointed in accordance with this paragraph—

15 “(A) shall not be an individual who is directly
 16 employed by, or receives a majority of his or her
 17 livelihood from, the commercial, charter, or rec-
 18 reational fishing community; and

19 “(B) shall be appointed without regard to sub-
 20 sections (B) and (C) of paragraph (2).”.

21 **SEC. 17. MISCELLANEOUS AMENDMENTS TO PURPOSES**
 22 **AND POLICY.**

23 Section 2 (16 U.S.C. 1801) is amended—

24 (1) in subsection (b)(6) by inserting “eco-
 25 logically sound” after “to encourage the”; and

1 (2) in subsection (c)(6) by inserting “restore,”
2 after “to foster”.

3 **SEC. 18. FOREIGN FISHING.**

4 Section 201(e)(1)(E) (16 U.S.C. 1821(e)(1)(E)) is
5 amended—

6 (1) in clause (iii) by inserting “and compliance
7 with and enforcement of international fishing agree-
8 ments and treaties” after “fishing regulations”; and

9 (2) in clause (vii) by inserting “, conservation,”
10 after “fishery research”.

11 **SEC. 19. DRIFTNETS.**

12 Section 206(c)(1) (16 U.S.C. 1826(c)(1)) is amended
13 by inserting before the semicolon at the end the following:
14 “and comply with any further action or resolution adopted
15 by the United Nations on large-scale driftnet fishing to
16 which the United States is a signatory.”.

17 **SEC. 20. SOURCES FOR DATA IN FISHERIES RESEARCH.**

18 Section 404(a) (16 U.S.C. 1881c(a)) is amended by
19 adding at the end the following: “The program shall ac-
20 quire such knowledge and data using both fishery-depend-
21 ent and fishery-independent data sources.”.

22 **SEC. 21. MISCELLANEOUS FISHERY PROTECTIONS IN FISH-**
23 **ERY MANAGEMENT PLANS.**

24 Section 303(b) (16 U.S.C. 1853(b)) is amended by
25 striking “and” after the semicolon at the end of paragraph

1 (11), by striking the period at the end of paragraph (12)
2 and inserting a semicolon, and by adding at the end the
3 following:

4 “(13) designate closed areas, seasonal closures,
5 time closures, gear restrictions, or other methods for
6 limiting impacts on habitat, limiting bycatch impacts
7 of gear, or limiting fishing impact on spawning con-
8 gregations in specific geographic areas.”.

9 **SEC. 22. COOPERATIVE MARINE EDUCATION AND RE-**
10 **SEARCH PROGRAM.**

11 (a) PROGRAM.—The Secretary of Commerce may
12 enter into cooperative agreements with universities and in-
13 stitutions of higher learning in order to conduct research
14 in areas that support conservation and management of liv-
15 ing marine resources.

16 (b) INCLUDED RESEARCH.—Research conducted
17 under the program may include biological research
18 concerning—

19 (1) the abundance and life history parameters
20 of stocks of fish;

21 (2) the interdependence of fisheries or stocks of
22 fish and other ecosystem components; and

23 (3) the linkages between fish habitat and fish
24 production and abundance.

1 **SEC. 23. AUTHORIZATION OF APPROPRIATIONS.**

2 Section 4 (16 U.S.C. 1893) is amended to read as
3 follows:

4 **“SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

5 “There are authorized to be appropriated to the Sec-
6 retary for the purposes of carrying out the provisions of
7 this Act, not to exceed the following sums:

8 “(1) \$200,500,000 for fiscal year 2003;

9 “(2) \$214,000,000 for fiscal year 2004;

10 “(3) \$222,000,000 for fiscal year 2005;

11 “(4) \$230,000,000 for fiscal year 2006; and

12 “(5) \$238,000,000 for fiscal year 2007.”.

○